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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re C.R. et al., Persons Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
DEPARTMENT OF CHILDREN'S  
SERVICES,

Plaintiff and Respondent,

v.

JENNIFER R. et al.,

Defendants and Appellants.

E034933

(Super.Ct.No. J-182479 &  
J-182480)

OPINION

APPEAL from the Superior Court of San Bernardino County. Raymond L.  
Haight, III, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and  
Appellant Jennifer R.

Janette Freeman Cochran, under appointment by the Court of Appeal, for  
Defendants and Appellants Cheri C. and Joseph C.

Ronald D. Reitz, County Counsel, and P. Joanne Fenton, Deputy County Counsel,  
for Plaintiff and Respondent.

Lori A. Fields, under appointment by the Court of Appeal, for Minors.

Appellant Jennifer R. (mother) appeals from a Welfare and Institutions Code section 366.26<sup>1</sup> order terminating her parental rights to her children, R. (born in June 1998) and C. (born in April 2000) (the children). Mother argues that the order terminating parental rights should be reversed because the court erred by failing to apply the “beneficial relationship” exception, pursuant to section 366.26, subdivision (c)(1)(A). Cheri C. and Joseph C., the children’s maternal grandparents and de facto parents, have filed a separate appeal. They were appointed guardians of the children, but the court subsequently terminated their guardianship. They filed a section 388 petition, requesting return of the children to their custody. They now contend that the court erred in denying them a hearing on the section 388 petition, and in denying their motion for reconsideration of that petition. We find no merit in either appeal and affirm.<sup>2</sup>

### FACTUAL BACKGROUND

On May 30, 2002, section 300 petitions were filed on behalf of the children, alleging that they came within section 300, subdivisions (a) (serious physical harm) and

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> Counsel for the child joins with Department of Children’s Services, urging affirmance of the orders of the juvenile court.

(b) (failure to protect). The petition alleged that the children were at risk for suffering serious physical harm because unrelated two-year-old twin boys, Bradley and Bryce, were seriously injured while in the care of mother and her husband, Frank (father).<sup>3</sup> The detention report stated that while mother and father were babysitting Bradley and Bryce, Bradley stopped breathing. Mother called 911, and the boys were taken to the hospital. A physician from the hospital stated that Bradley had a serious skull fracture that was “‘definitely’ caused by an unknown weapon within one hour of the time paramedics had arrived at the house.” Bryce suffered injuries including bruising to the left eye, bruising behind the left ear, fractured ribs, and a right upper arm fracture. Mother and father stated that they did not know how the trauma happened.

#### Detention Hearing

At the detention hearing, mother submitted on the issue of detention. Mother’s own children, R. and C., were placed in the temporary custody of the Department of Children’s Services (DCS) and detained with their maternal grandparents, appellants Cheri C. (grandmother) and Joseph C. (grandfather) (together, the grandparents). The court ordered supervised visitation for mother and father three hours per week. The matter was continued to June 20, 2002, for a combined jurisdiction/disposition hearing. The matter was later continued to July 9, 2002.

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<sup>3</sup> Father is not a party to this appeal.

### Jurisdiction/Disposition Reports, Addendum Reports, and Hearing

In a jurisdiction/disposition report dated June 27, 2002, the social worker reported that Bradley died in the hospital on May 30, 2002. Mother and father were later arrested for murder and detained at West Valley Detention Center. Mother and father maintained that they did not know how the trauma to Bradley's head occurred or how Bryce was injured. The social worker discovered that father had a long history of being a victim of child abuse and also had previously been convicted of battery on August 7, 2000.

The social worker recommended that the children be declared dependents of the court, that the children be maintained in the home of the grandparents, and that the parents be provided with reunification services.

The matter was continued until July 11, 2002, and then again until July 17, 2002.

The social worker filed a first addendum report on July 15, 2002. The purpose of the report was to inform the court of a change in recommendations. The social worker now recommended that no reunification services be provided to the parents. The social worker stated that an amended section 300 petition was being filed to add a subdivision (f) allegation (the parents caused another child's death through abuse or neglect) and a subdivision (g) allegation (no provision for support). The social worker noted that the parents were the only suspects in the murder investigation; they were the only adults in the home at the time the injury occurred. The social worker stated that it was in the best interests of the children to consider termination of parental rights since there was clear and convincing evidence that mother and father caused the death of another child through abuse or neglect.

On July 17, 2002, the matter was continued to August 30, 2002, for a pretrial settlement conference, to September 3, 2002, for a contested jurisdiction hearing, and to September 16, 2002, for a contested disposition hearing.

On August 26, 2002, the social worker filed another addendum report in order to provide the court with reports from the Children's Assessment Center (CAC) on an examination of R., and with medical and radiological reports concerning Bradley and Bryce.

On August 30, 2002, the matter was continued to October 4, 2002, for pretrial settlement conference, to October 16, 2002, for a contested jurisdiction hearing, and to October 17, 2002, for a contested disposition hearing.

On October 31, 2002, the social worker filed another addendum report in order to provide the court with a copy of the coroner's investigation and autopsy report concerning Bradley's death. Father had claimed that he saw Bradley stand on a chair, jump backwards, and then land on his head on the carpeted floor. Mother and father also said that the twins used to have tantrums where they would kick and scream and bang their heads on the floor. The pathologist who examined Bradley's body stated that he had multiple skull fractures and died of a blunt force head injury. The doctor also stated that the injury to Bradley was much greater than he would expect from jumping backwards and landing on the back of the head on a carpeted floor. The doctor concluded that "[t]he degree of force needed to produce these injuries [was] much more consistent with inflicted trauma from a blow or being forcibly thrown against a firm surface." The doctor opined that the manner of death was homicide.

The matter was continued once more, and a contested jurisdiction hearing was held on November 20, 2002. The court received all of the social worker's reports into evidence. Mother did not present any evidence. The court found true all of the allegations of the petition, except those made pursuant to section 300, subdivision (g). The disposition hearing was set for December 16, 2002.

The social worker filed an addendum report dated December 16, 2002, which contained a guardianship suitability study. The report stated that the children were very close with their grandparents, and that the grandparents had done a very good job in meeting the children's needs. The grandparents' residence was clean and comfortable. The social worker recommended that the children be detained with the grandparents and that the grandparents be granted guardianship of both children.

At the disposition hearing on December 16, 2002, the court found that mother and father had maintained regular visitation and contact with the children, and that the children would benefit from continuing the relationship. The children were declared dependents of the court, and the grandparents were appointed legal guardians of the children. Visitation was to be arranged and supervised by the grandparents. The social worker requested that the grandparents be furnished with copies of the jurisdiction/disposition report and medical reports on the twins, so that the grandparents would be "fully knowledgeable when it comes to supervising visitation." The court agreed and granted the request. The matter was continued to June 16, 2003, for a six-month review.

### Section 387 Petition

On February 3, 2003, the DCS filed a supplemental petition, pursuant to section 387, alleging that the court's previous order to maintain the children with the grandparents had been ineffective in protecting the children because: 1) on or about January 30, 2003, the grandfather had been arrested and charged with assault with a deadly weapon upon a peace officer, while the children were present; and 2) from August 2, 2002, to the present, the grandparents had put the children at risk of serious physical harm by permitting the parents to have unsupervised contact with the children, against the court's order. The DCS recommended placement in a foster home.

### Detention Report and Hearing

The social worker reported that the grandparents had actually allowed the parents to move into their home and frequently left the children with the parents unsupervised. On January 29, 2003, a newly assigned caseworker went to the grandparents' home for a scheduled appointment to meet with the grandparents and the children. Mother was at the house. It appeared to the social worker that mother was living there and not just visiting. Father arrived at the house at 5:00 p.m., and the social worker noted that he appeared to have come home from work for the night. Father "dropped his things as he came in", did not ask how the children were doing, and barely spoke to the social worker. A further investigation with law enforcement officers was initiated since the court's order did not allow the parents to live in the guardians' home.

The next day, two social workers and a deputy sheriff went to the grandparents' house. One of the social workers asked mother if she and father were living there, and

mother confirmed that they were. Since the grandparents had violated the court's order by allowing the parents to live in their home and have unsupervised contact with the children, the social workers decided to remove the children from the home. The parents and grandparents became very upset and started arguing, crying, and yelling. When the social worker attempted to give the grandfather a pamphlet on his rights, the grandfather lunged forward over the coffee table toward the deputy sheriff, swinging a 12-inch flashlight and yelling, "Get out of my house! I'm calling the police!" The deputy used pepper spray to subdue the grandfather and then arrested him.

On February 4, 2003, the court removed the children from the grandparents and placed them in foster care. A contested detention hearing was set for February 6, 2003. The grandparents and mother withdrew their contest, and the matter was continued to February 27, 2003, for a jurisdiction/disposition hearing.

#### Jurisdiction/disposition Report and Hearing

In a jurisdiction/disposition report dated February 27, 2003, the social worker recommended that reunification services not be provided to the grandparents because of their level of denial and inability to protect the children from their parents. The social worker recommended a permanent plan of adoption and reported that an assessment of relatives was in progress.

On April 18, 2003, the grandparents agreed to a voluntary termination of their guardianship. The guardianship was terminated, and, thereafter, the section 387 petition was dismissed. The matter was set for a hearing on June 16, 2003.

The social worker filed a status review report on May 30, 2003, recommending



that a section 366.26 hearing be set to establish a permanent plan of adoption for the children. The children were placed with a paternal aunt and uncle (the Avilas) on March 5, 2003, after the guardianship with the grandparents failed. The social worker noted that the Avilas were committed to providing a stable home for the children, were able and willing to meet the children's needs, and were bonding with the children. The Avilas wanted to adopt the children. The social worker reported that the parents were involved in the criminal proceedings for Bradley's death, and that they still denied causing his death. The social worker stated that the parents and grandparents had consistently visited the children two hours per week (supervised). However, the social worker noted that visitation with the parents and grandparents had become "stressful for the children." The parents and grandparents had been critical of the Avilas, had been "overly emotional at the goodbyes" at the end of the visits, and had made inappropriate comments to the children about things they (the children) could do "when they came home."

The matter was continued on June 16, 2003. On July 28, 2003, the court set a section 366.26 hearing for October 27, 2003.

#### Visitation Report and Hearing

On September 2, 2003, a non-appearance review packet was filed recommending a reduction in visits with mother and father and termination of visits with the grandparents. A special hearing on visitation was held on September 16, 2003. Social worker Chet Ainsworth testified that the most recurring problem during visitation was that the parents whispered to the children and discussed the case with them, despite repeatedly being warned not to do so. This behavior was detrimental to the children because it

undermined the ability of the children to adjust to the caretakers' home. The court ordered supervised visits of one hour per week, at the DCS office. The court further ordered the parents not to whisper to the children.

#### Section 366.26 Report and Hearing

The social worker filed a section 366.26 report dated October 27, 2003, recommending that parental rights be terminated and that the children be adopted by the Avilas. The social worker noted that the children were emotionally attached to the Avilas and considered them their parental figures. The Avilas were eager to adopt the children. The social worker further stated that the parents and grandparents have shown "a profound lack of compliance with the court orders", and that they are "so united around their denial and self-justification that it is almost impossible to work with them."

The social worker filed an addendum report dated October 26, 2003, recommending that parental visitation be declared detrimental to the children. The children had been significantly acting out after the visits. After one visit, R. was very moody, was shoving her brother, and refused to go to bed. C. was unable to eat after the visit and ended up crying for a long time, wanting to be hugged all night. Furthermore, approximately 30 minutes into the supervised visits, the children consistently asked if it was time to go home yet. In addition, R. had been attending therapy and memories of Bradley's death came up. R. said that her father did not like Bradley and that he yelled at him, hit him, and would refuse to feed him. R. said that she saw her father seriously abuse Bradley and was even forced to participate. Bradley was lying on the floor and father told her to jump down on Bradley from the bed. Then father jumped on Bradley

with his knees. R. also saw father throw Bryce into the wall.

The social worker noted that the children were not enjoying the visits with the parents. The children wanted the visits to end early and were upset when they returned to the grandparents' home. Furthermore, R. had been subpoenaed to testify at her parents' criminal trial. The parents had been whispering to the children during the visits. The social worker felt that further visitation was inappropriate.

On October 29, 2002, the section 366.26 hearing was continued to October 31, 2003.

#### First Section 388 Petition

On October 31, 2003, the grandparents filed a section 388 petition requesting de facto parent status and custody of the children. As a change of circumstance, the grandparents alleged that they had "acted as parents under a guardianship and the minors have exhibited detrimental behavior that will continue if the initial plan proceeds." After reading the petition, the court denied a hearing, stating that the petition failed to state a change of circumstances or establish that it would be in the best interests of the children to change placements. However, the court granted de facto parent status, noting that the grandparents had been deeply involved in the children's lives, that they had assumed a parental role for a substantial period of time, and that the grandparents possessed "information about [the children] unique from the other participants in the process." The matter was continued to November 13, 2003, for a further section 366.26 hearing.

#### Addendum to Section 366.26 Report

On November 5, 2003, the social worker filed a second addendum to the section

366.26 report, recommending that visitation by both the parents and the grandparents be found detrimental, and that an order be issued restraining the parents from contact with the caretakers.

### Second Section 388 Petition

On November 7, 2003, the grandparents filed another section 388 petition requesting the court to place the children with them again and to order a bonding study concerning the paternal aunt and the children. As to changed circumstances or new evidence, the petitioner referred to declarations by the grandparents and character reference letters. In the grandmother's declaration, she complained that Janis Avila, the current caretaker of the children, began to regulate how the visits with the children were conducted. Some of the rules included not lying, not carrying the children, and not having any whispered conversations with the children. The grandmother also stated that R. had lost weight since living with the Avilas, that she seemed depressed, and that C. often had dark circles under his eyes. The declaration also contained grandmother's criticisms of the Avilas' own children. The grandmother stated that she believed that the change in the children's behavior warranted a "bonding study to see how they interact in their new home and if it is in their best interests to continue to be placed there." The grandfather's declaration essentially agreed with the grandmother's declaration, and also "contested" the fact that he was convicted of resisting an arrest. The grandfather further pointed out that he was a pastor in the Church of Morongo and that he found it difficult to believe that his "credibility [had been] called into question as to the appropriate choice of placement of [the] grandchildren."

The court denied a hearing on the petition, stating that the petition failed to state new evidence or a change of circumstances and failed to show how the requested modification would promote the best interests of the children.

#### Section 366.26 Hearing on November 13, 2003

At the section 366.26 hearing on November 13, 2003, the court admitted as evidence all of the social worker's reports, except for references to the CAC report, and a transcript of the visitation hearing. After a chambers conference with counsel, all parties stipulated to the following: if the parents were to testify, they would testify that there was a strong and beneficial bond between them and the children built during the period of visitation in this case (January 2003 to September 2003); and, if the social worker were to testify, he would testify that he observed most of the visits between the parents and the children, as well as many interactions between the current caretakers and the children; in his opinion, the current caretakers (the Avilas) had the stronger bond and the "parental bond" with the children. The court declared, "Then as far as evidence, all parties have rested." The matter was continued to December 5, 2003, and again to December 12, 2003.

#### Motion for Reconsideration of Section 388 Petition

On November 18, 2003, the grandparents filed a motion to reconsider their second section 388 petition (filed on November 7, 2003). The motion alleged that the person who reported to the DCS that the grandparents had left the children unsupervised with the parents was psychotic and delusional, and that the social worker had a personal bias against the grandparents. The motion also alleged that Janis Avila told the parents that

she did not think she could handle the children, and that Avila offered “an illegal visit” to the parents. The motion was supported by additional character reference letters regarding the grandparents. The court denied the motion on the pleadings because it failed to show a change of circumstance or that the proposed change was in the best interests of the children.

#### Conclusion of the Section 366.26 Hearing

On December 12, 2003, the court found that the children were adoptable. The court noted the parents’ argument that the beneficial relationship exception of section 366.26, subdivision (c)(1)(A) applied. However, the court found that the relationship between the parents, the extended family, and the children tended to destabilize the children’s placement, and that the children had had “adverse emotional reactions because of the tug-of-war between the various family members.” The court found that the relationship between the parents and the children was not beneficial for that reason; therefore, the beneficial relationship exception to termination of parental rights did not apply here. The court terminated parental rights and placed the children for adoption.

Mother and the grandparents now appeal.

#### ANALYSIS

##### I. Mother’s Appeal

Mother’s sole argument is that the court erred in failing to apply the beneficial relationship exception of section 366.26, subdivision (c)(1)(A). Section 366.26, subdivision (c)(1)(A) authorizes the juvenile court to avoid the termination of parental rights to an adoptable child if it finds “a compelling reason for determining that

termination would be detrimental to the child [because] . . . [t]he parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’’ (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424.) We find no error.

#### A. Standard of Review

We review a juvenile court’s refusal to apply the beneficial relationship exception of section 366.26, subdivision (c)(1)(A) under the substantial evidence test. (*In re Clifton B.*, *supra*, 81 Cal.App.4th at page 425.) “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

#### B. The Section 366.26, Subdivision (c)(1)(A), Beneficial Relationship Exception Did Not Apply

The parent has the burden of proof to show that the section 366.26, subdivision (c)(1)(A) exception applies. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953.) The parent “must show more than frequent and loving contact or pleasant visits. [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.]’ [Citation.] The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]” (*Id.* at pp. 953-954.)

Furthermore, the beneficial relationship exception must be considered in view of the legislative preference for adoption. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “[W]e interpret the ‘benefit from continuing the [parent/child] relationship’ exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging to a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at page 575.) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at page 1350.)

It requires little discussion to conclude that the beneficial relationship exception did not apply here. Mother was required to show that she occupied “a parental role in the [children’s lives], resulting in a significant, positive, emotional attachment from child to parent. [Citations.]” (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at page 954.) Mother did not offer any evidence to show that she occupied a parental role in the children’s lives. Moreover, there was no evidence of a “significant, positive, emotional attachment from child to parent.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at page 575.) On the contrary, the evidence showed that the children significantly acted out after the visits with mother.



The social worker noted that after one visit, R. was very moody, and she was shoving her brother; she also refused to go to bed. C. was unable to eat after a visit and ended up crying for a long time, wanting to be hugged all night. Furthermore, the social worker noted that the children were not enjoying the visits with mother. They consistently wanted the visits to end early and were upset after the visits.

In addition, mother and father were the only suspects in the murder investigation, since the twins were in their care and they were the only adults in the home at the time the abuse occurred. Even so, mother repeatedly claimed that she did not know what happened to the twins and denied that the death and abuse were caused by her and father. Given the grave nature of the abuse and mother's complete denial of responsibility, we cannot confidently say that mother would, if not convicted of Bradley's murder, provide a safe home for the children.

In contrast, the children were bonded with their current caretakers, the Avilas. The parties stipulated that if the social worker were to testify at the section 366.26 hearing, he would have testified that the children had a stronger bond with them, as opposed to mother and father. The social worker observed that the children were emotionally attached to the Avilas and considered them their parental figures. The children have been living with the Avilas since March 5, 2003. The social worker noted that the Avilas were able and willing to meet the children's needs, that they were committed to providing a stable home for the children, and that they were eager to adopt the children.

The benefit of a stable, permanent adoptive home for the children clearly

outweighed the benefit of a continued relationship with mother. Thus, the trial court properly refused to apply the beneficial relationship exception to the termination of mother's parental rights.

## II. Grandparents' Appeal

The grandparents filed a section 388 petition on November 7, 2003, requesting the court to return the children to their custody and to order a bonding study concerning Janis Avila and the children. The petition included declarations by the grandparents and character reference letters. The court denied a hearing on the petition, finding that the petition failed to state a change of circumstances and failed to show how the requested modification would promote the best interests of the children. On November 18, 2003, the grandparents filed a "motion for reconsideration" of the court's denial of the section 388 petition. The court denied this motion on the same grounds. On appeal, the grandparents contend that the court erred in denying both the section 388 petition and the motion for reconsideration. We disagree.

### A. Standard of Review

Pursuant to section 388, "[t]he juvenile court may modify an order if a parent shows, by a preponderance of the evidence, changed circumstance or new evidence and that modification would promote the child's best interests. [Citations.] This is determined by the seriousness of the problem leading to the dependency and the reason for its continuation; the strength of the parent-child and child-caretaker bonds and the time the child has been in the system; and the nature of the change of circumstance, the ease by which it could be achieved, and the reason it did not occur sooner. [Citation.]"

(*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.)

“Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.’ [Citation.] The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]” (*In re Amber M., supra*, 103 Cal.App.4th at pages 685-686.)

B. The Court Did Not Abuse its Discretion in Denying the Grandparents’ Section 388 Petition Without a Hearing

The court found that the grandparents failed to show that there had been a change of circumstances that justified modification of the previous order terminating their guardianship and failed to show that returning the children to their custody would be in the best interests of the children. There was no abuse of discretion.

1. Background

The guardianship of the grandparents was terminated because the grandparents had failed to protect the children. The section 387 petition alleged that the previous order of the court to maintain the children with the grandparents had been ineffective in protecting the children because: 1) the grandparents had put the children at risk of serious physical harm by permitting the parents to move into their house and by leaving the children unsupervised with the parents, against the court’s orders; and 2) the grandfather had been arrested and charged with assault with a deadly weapon upon a peace officer. Specifically, the grandparents allowed the parents to move in with them, despite having been shown the jurisdiction/disposition report and the medical reports

regarding the abuse of Bryce and the death of Bradley. When the social worker decided to remove the children from the grandparents' home, the parents and grandparents became very upset and started arguing, crying, and yelling. Then, when the social worker attempted to give the grandfather a pamphlet, the grandfather lunged at the deputy sheriff, swinging a 12-inch flashlight and yelling, "Get out of my house! I'm calling the police!" The deputy had to use pepper spray to subdue him and then arrested him. These circumstances clearly demonstrate that the grandparents saw nothing wrong with allowing the parents to live with the children.

Furthermore, since the children were removed from the grandparents' home, the grandparents' behavior at visits with the children had become inappropriate. The social worker was forced to write two letters to the grandparents warning them to stop taking the children aside to have private conversations with them (the court ordered *supervised* visitation), to stop making inappropriate statements alluding to the time when the children "will come home," to stop bringing money or gifts without prior approval from the caretakers, and to stop being rude and insensitive to the caretakers.

In the section 366.26 report, the social worker stated that the parents and grandparents had shown "a profound lack of compliance with the court orders," which was why the grandparents' guardianship was terminated. The social worker stated that the parents and grandparents were "so united around their denial and self-justification that it [was] almost impossible to work with them." The social worker further stated that the "degree of rigid denial [was] amazing and [did] not seem to be altered by any efforts at intervention or circumstances, even the loss of the children." The social worker

strongly felt that the permanent plan should be adoption “[b]ecause of the relentlessness of victim mentality and lack of cooperation from the parents and grandparents.”

2. The Section 388 Petition Failed to Allege Any Changed Circumstances and Failed to Show How the Returning the Children to the Grandparents’ Custody Would be in the Children’s Best Interests

As to changed circumstances, the section 388 petition merely referred to the grandparents’ declarations filed in support of the petition and to character reference letters. The grandmother’s declaration simply criticized Janis Avila’s care of the children and alleged negative changes that the grandmother had noticed in the children since living with the Avilas. In the grandfather’s declaration, he simply agreed with the grandmother and also “contested” the fact that he was convicted of resisting an arrest; he claimed that he pled “‘nolo contendere’ for the express purpose of accepting the benefits of a plea bargain and not because [he] was guilty.” The grandfather further pointed out that he was a pastor in the Church of Morongo and that he found it difficult to believe that his “credibility [had been] called into question as to the appropriate choice of placement of [the] grandchildren.”

The grandparents have not alleged any change in the circumstances that led to the removal of the children from their home. (See *In re Amber M.*, *supra*, 108 Cal.App.4th at page 685.) Despite knowing that Bradley and Bryce were in the parents’ care when the abuse occurred and being furnished with the medical reports on the twins, the grandparents refused to believe that the parents posed any threat of danger to the children. Thus, the grandparents allowed the parents to move in with them and the

children. Consequently, the children were removed from the grandparents' home.

The grandparents' viewpoint has not changed, as demonstrated by grandmother's declaration filed in support of the motion for reconsideration. The declaration acknowledged that grandmother previously said, "Daddy didn't hurt Bradley. Babies cry a lot." The grandmother then defended that statement by affirming in her declaration that she did not believe that father hurt Bradley. Grandfather agreed with the grandmother. Thus, the grandparents still fail to recognize the possibility of any danger to the children posed by the parents. Clearly, there has been no change in circumstance that would justify returning the children to their custody.

Furthermore, the grandparents have not shown how returning the children to their custody would be in the children's best interests. The social worker noted the grandparents' "rigid denial," self-justification, and "profound lack of compliance with" the court's orders, and concluded that the grandparents were "very clearly not acceptable[,] especially in light of their ongoing lack of insight and failure to follow Court orders." In view of the grandparents' refusal to recognize any responsibility on the parents' part for Bradley's death or for the abuse of Bryce, the grandparents' failure to protect the children from the parents, and the grandparents' defiant attitude toward court orders, we cannot see how returning the children to the grandparents would be in the children's best interests.

#### C. The Court Did Not Abuse its Discretion in Denying the Grandparents' Motion for Reconsideration

After the court denied the section 388 petition, the grandparents filed a "motion to

reconsider” the petition. This motion alleged that the person who reported to the DCS that the grandparents left the children unsupervised with the parents was psychotic and delusional. The motion also alleged that Janis Avila told the parents that she did not think she could handle the children and that she “may have to ask for another placement.” The motion further alleged that Janis Avila offered “an illegal visit” to the parents. The motion was supported by additional character reference letters regarding the grandparents, as well as a declaration by the grandmother alleging that the social worker had a personal bias against her and her husband.

The court found that the motion failed to show a change of circumstance or that the proposed change was in the best interests of the children. The court recognized that this motion was a “thinly disguised attempt to relitigate” the removal of the children from the grandparents. Upon review of the motion, we agree entirely with the trial court’s view and denial of this motion. There was no abuse of discretion.

#### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Ward  
J.

We concur:

s/McKinster  
Acting P. J.

s/Gaut  
J.